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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/773,856	02/01/2001	Hans Heyde	011881-1890	3580
7590	02/17/2005			
THOMAS, KAYDEN, HORSTEMEYER & RISLEY, L.L.P. 100 Galleria Parkway, Suite 1750 Atlanta, GA 30339				EXAMINER LEO, LEONARD R
			ART UNIT 3753	PAPER NUMBER

DATE MAILED: 02/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/773,856	HEYDE, HANS
	<b>Examiner</b>	<b>Art Unit</b>
	Leonard R. Leo	3753

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 22 November 2004.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,2,7,8,10,11,13,14,16,18-21 and 25-28 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1,2,7,8,10,11,13,14,16,18-21 and 25-28 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 11-5-04

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 22, 2004 has been entered.

Claims 3-6, 9, 12, 15, 17 and 22-24 are cancelled, and claims 1-2, 7-8, 10-11, 13-14, 16, 18-21 and 25-28 are pending.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 7-8, 10-11, 13-14, 16, 18-21 and 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Nagel et al.

Sakai discloses all the claimed limitations except a plurality of distance elements distributed across the width of the free space.

Nagel et al discloses a heat exchange plate comprising a pair of sheets 7, 8 having an inlet 14 and outlet 15, and distance elements 16 (Figures 4 and 6) for the purpose of supporting and adjusting the flatness of the device (column 3, lines 43-49).

Since Sakai and Nagel et al are both from the same field of endeavor and/or analogous art, the purpose disclosed by Nagel et al would have been recognized in the pertinent art of Sakai.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sakai distance elements for the purpose of supporting and adjusting the flatness of the device as recognized by Nagel et al.

The recitation of "for articles of candy" is considered to be a statement of intended use, even if claimed, does not merit patentable weight unless the body of the claim refers back to, is defined by, or otherwise draws life and breadth from such intended use. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

Regarding claims 10-11, 13-14 and 25-26, the channel below bottom heat exchange plate 1 of Nagel et al in Figure 6 is open in a lateral direction.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sakai in view of Nagel et al as applied to claims 1-2, 7-8, 10-11, 13-14, 16, 18-21 and 25-27 above, and further in view of Raskin or Pradel.

The combined teachings of Sakai and Nagel et al lacks a cooling plate composed of an upper plate and lower corrugated plate.

Raskin discloses cooling plate comprising an upper plate 1 and lower plate 2 with corrugations 3 for the purpose of ease of manufacture and improved heat exchange.

Pradel discloses a cooling plate comprising an upper plate 2 and lower corrugated plate 1 for the purpose of ease of manufacture.

Since Sakai and Raskin or Pradel are both from the same field of endeavor and/or analogous art, the purpose disclosed by Raskin or Pradel would have been recognized in the pertinent art of Sakai.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ in Sakai an upper plate and lower corrugated plate to form the cooling plate for the purpose of ease of manufacture as recognized by Raskin or Pradel.

***Response to Arguments***

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

The rejection in view of Sollich (DE 23 22 918) is withdrawn, since the limitation with respect to a roller path has been deleted.

The rejections in view of Mills and Protze et al are withdrawn.

No further comments are deemed necessary at this time.

***Conclusion***

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leonard R. Leo whose telephone number is (571) 272-4916. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Mancene can be reached on (571) 272-4930. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

*Leonard R. Leo*  
LEONARD R. LEO  
PRIMARY EXAMINER  
ART UNIT 3753

February 15, 2005